

Assembly Bill No. 1191

Passed the Assembly August 17, 2015

Chief Clerk of the Assembly

Passed the Senate July 16, 2015

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2015, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend, repeal, and add Section 66477 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 1191, Nazarian. Quimby Act: fees.

The Quimby Act, within the Subdivision Map Act, authorizes the legislative body of a city or county to require the dedication of land or to impose fees for park or recreational purposes as a condition of the approval of a tentative or parcel subdivision map, if specified requirements are met. Existing law requires any fees collected to be committed within 5 years after the payment of the fees or the issuance of building permits on $\frac{1}{2}$ of the lots created by the subdivision, whichever occurs later. Existing law requires any fees not committed to be distributed and paid to the then record owners of the subdivision, as specified.

This bill would define the term “fee,” as used in the Quimby Act with regard to the expenditure of fees, to include any interest income generated from a fee charged and collected pursuant to that act. The bill would provide that these provisions are declaratory of existing law. The bill would, until January 1, 2021, authorize a city with a population of 3 million or more to commit interest earned on or before January 1, 2016, on fees charged pursuant to that act, without regard to the date the fee was collected or the date of issuance of building permits on $\frac{1}{2}$ of the lots created by the subdivision, outside the subdivision for which the fees were collected, provided that the city holds a public hearing prior to committing the interest, and uses the interest to develop new or rehabilitate existing neighborhood or community parks or recreational facilities within the city.

The people of the State of California do enact as follows:

SECTION 1. Section 66477 of the Government Code is amended to read:

66477. (a) The legislative body of a city or county may, by ordinance, require the dedication of land or impose a requirement

of the payment of fees in lieu thereof, or a combination of both, for park or recreational purposes as a condition to the approval of a tentative map or parcel map, if all of the following requirements are met:

(1) The ordinance has been in effect for a period of 30 days prior to the filing of the tentative map of the subdivision or parcel map.

(2) The ordinance includes definite standards for determining the proportion of a subdivision to be dedicated and the amount of any fee to be paid in lieu thereof. The amount of land dedicated or fees paid shall be based upon the residential density, which shall be determined on the basis of the approved or conditionally approved tentative map or parcel map and the average number of persons per household. There shall be a rebuttable presumption that the average number of persons per household by units in a structure is the same as that disclosed by the most recent available federal census or a census taken pursuant to Chapter 17 (commencing with Section 40200) of Part 2 of Division 3 of Title 4. However, the dedication of land, or the payment of fees, or both, shall not exceed the proportionate amount necessary to provide three acres of park area per 1,000 persons residing within a subdivision subject to this section, unless the amount of existing neighborhood and community park area, as calculated pursuant to this subdivision, exceeds that limit, in which case the legislative body may adopt the calculated amount as a higher standard not to exceed five acres per 1,000 persons residing within a subdivision subject to this section.

(A) The park area per 1,000 members of the population of the city, county, or local public agency shall be derived from the ratio that the amount of neighborhood and community park acreage bears to the total population of the city, county, or local public agency as shown in the most recent available federal census. The amount of neighborhood and community park acreage shall be the actual acreage of existing neighborhood and community parks of the city, county, or local public agency as shown on its records, plans, recreational element, maps, or reports as of the date of the most recent available federal census.

(B) For cities incorporated after the date of the most recent available federal census, the park area per 1,000 members of the population of the city shall be derived from the ratio that the

amount of neighborhood and community park acreage shown on the maps, records, or reports of the county in which the newly incorporated city is located bears to the total population of the new city as determined pursuant to Section 11005 of the Revenue and Taxation Code. In making any subsequent calculations pursuant to this section, the county in which the newly incorporated city is located shall not include the figures pertaining to the new city which were calculated pursuant to this paragraph. Fees shall be payable at the time of the recording of the final map or parcel map, or at a later time as may be prescribed by local ordinance.

(3) (A) The land, fees, or combination thereof are to be used only for the purpose of developing new or rehabilitating existing neighborhood or community park or recreational facilities to serve the subdivision, except as provided in subparagraph (B).

(B) Notwithstanding subparagraph (A), fees may be used for the purpose of developing new or rehabilitating existing park or recreational facilities in a neighborhood other than the neighborhood in which the subdivision for which fees were paid as a condition to the approval of a tentative map or parcel map is located, if all of the following requirements are met:

(i) The neighborhood in which the fees are to be expended has fewer than three acres of park area per 1,000 members of the neighborhood population.

(ii) The neighborhood in which the subdivision for which the fees were paid has a park area per 1,000 members of the neighborhood population ratio that meets or exceeds the ratio calculated pursuant to subparagraph (A) of paragraph (2), but in no event is less than three acres per 1,000 persons.

(iii) The legislative body holds a public hearing before using the fees pursuant to this subparagraph.

(iv) The legislative body makes a finding supported by substantial evidence that it is reasonably foreseeable that future inhabitants of the subdivision for which the fee is imposed will use the proposed park and recreational facilities in the neighborhood where the fees are used.

(v) The fees are used within a specified radius that complies with the city's or county's ordinance adopted pursuant to subdivision (a), and are consistent with the adopted general plan or specific plan of the city or county. For purposes of this clause, "specified radius" includes a planning area, zone of influence, or

other geographic region designated by the city or county, that otherwise meets the requirements of this section.

(4) The legislative body has adopted a general plan or specific plan containing policies and standards for parks and recreational facilities, and the park and recreational facilities are in accordance with definite principles and standards.

(5) The amount and location of land to be dedicated or the fees to be paid shall bear a reasonable relationship to the use of the park and recreational facilities by the future inhabitants of the subdivision.

(6) (A) (i) The city, county, or other local public agency to which the land or fees are conveyed or paid shall develop a schedule specifying how, when, and where it will use the land or fees, or both, to develop park or recreational facilities to serve the residents of the subdivision. Any fees collected under the ordinance shall be committed within five years after the payment of the fees or the issuance of building permits on one-half of the lots created by the subdivision, whichever occurs later. If the fees are not committed, they, without any deductions, shall be distributed and paid to the then record owners of the subdivision in the same proportion that the size of their lot bears to the total area of all lots within the subdivision.

(ii) Notwithstanding clause (i), a city with a population of three million or more may commit interest accrued on or before January 1, 2016, on fees charged pursuant to this section, without regard to the date the fee was collected or the date of issuance of building permits on one-half of the lots created by the subdivision, outside the subdivision for which the fees were collected, provided that the city holds a public hearing prior to committing the interest, and uses the interest to develop new or rehabilitate existing neighborhood or community parks or recreational facilities within the city.

(B) The city, county, or other local agency to which the land or fees are conveyed or paid may enter into a joint or shared use agreement with one or more other public districts in the jurisdiction, including, but not limited to, a school district or community college district, in order to provide access to park or recreational facilities to residents of subdivisions with fewer than three acres of park area per 1,000 members of the population.

(7) Only the payment of fees may be required in subdivisions containing 50 parcels or less, except that when a condominium project, stock cooperative, or community apartment project, as those terms are defined in Sections 4105, 4125, and 4190 of the Civil Code, exceeds 50 dwelling units, dedication of land may be required notwithstanding that the number of parcels may be less than 50.

(8) Subdivisions containing less than five parcels and not used for residential purposes shall be exempted from the requirements of this section. However, in that event, a condition may be placed on the approval of a parcel map that if a building permit is requested for construction of a residential structure or structures on one or more of the parcels within four years, the fee may be required to be paid by the owner of each parcel as a condition of the issuance of the permit.

(9) If the subdivider provides park and recreational improvements to the dedicated land, the value of the improvements together with any equipment located thereon shall be a credit against the payment of fees or dedication of land required by the ordinance.

(b) Land or fees required under this section shall be conveyed or paid directly to the local public agency which provides park and recreational services on a communitywide level and to the area within which the proposed development will be located, if that agency elects to accept the land or fee. The local agency accepting the land or funds shall develop the land or use the funds in the manner provided in this section.

(c) If park and recreational services and facilities are provided by a public agency other than a city or county, the amount and location of land to be dedicated or fees to be paid shall, subject to paragraph (2) of subdivision (a), be jointly determined by the city or county having jurisdiction and that other public agency.

(d) This section does not apply to commercial or industrial subdivisions or to condominium projects or stock cooperatives that consist of the subdivision of airspace in an existing apartment building that is more than five years old when no new dwelling units are added.

(e) Common interest developments, as defined in Section 4100 of the Civil Code, shall be eligible to receive a credit, as determined by the legislative body, against the amount of land required to be

dedicated, or the amount of the fee imposed, pursuant to this section, for the value of private open space within the development which is usable for active recreational uses.

(f) Park and recreation purposes shall include land and facilities for the activity of “recreational community gardening,” which activity consists of the cultivation by persons other than, or in addition to, the owner of the land, of plant material not for sale.

(g) As used in this section with regard to the expenditure of fees, the term “fee” includes any interest income generated from a fee charged and collected pursuant to this section.

(h) This section shall be known, and may be cited, as the Quimby Act.

(i) This section shall remain in effect only until January 1, 2021, and as of that date is repealed.

SEC. 2. Section 66477 is added to the Government Code, to read:

66477. (a) The legislative body of a city or county may, by ordinance, require the dedication of land or impose a requirement of the payment of fees in lieu thereof, or a combination of both, for park or recreational purposes as a condition to the approval of a tentative map or parcel map, if all of the following requirements are met:

(1) The ordinance has been in effect for a period of 30 days prior to the filing of the tentative map of the subdivision or parcel map.

(2) The ordinance includes definite standards for determining the proportion of a subdivision to be dedicated and the amount of any fee to be paid in lieu thereof. The amount of land dedicated or fees paid shall be based upon the residential density, which shall be determined on the basis of the approved or conditionally approved tentative map or parcel map and the average number of persons per household. There shall be a rebuttable presumption that the average number of persons per household by units in a structure is the same as that disclosed by the most recent available federal census or a census taken pursuant to Chapter 17 (commencing with Section 40200) of Part 2 of Division 3 of Title 4. However, the dedication of land, or the payment of fees, or both, shall not exceed the proportionate amount necessary to provide three acres of park area per 1,000 persons residing within a subdivision subject to this section, unless the amount of existing

neighborhood and community park area, as calculated pursuant to this subdivision, exceeds that limit, in which case the legislative body may adopt the calculated amount as a higher standard not to exceed five acres per 1,000 persons residing within a subdivision subject to this section.

(A) The park area per 1,000 members of the population of the city, county, or local public agency shall be derived from the ratio that the amount of neighborhood and community park acreage bears to the total population of the city, county, or local public agency as shown in the most recent available federal census. The amount of neighborhood and community park acreage shall be the actual acreage of existing neighborhood and community parks of the city, county, or local public agency as shown on its records, plans, recreational element, maps, or reports as of the date of the most recent available federal census.

(B) For cities incorporated after the date of the most recent available federal census, the park area per 1,000 members of the population of the city shall be derived from the ratio that the amount of neighborhood and community park acreage shown on the maps, records, or reports of the county in which the newly incorporated city is located bears to the total population of the new city as determined pursuant to Section 11005 of the Revenue and Taxation Code. In making any subsequent calculations pursuant to this section, the county in which the newly incorporated city is located shall not include the figures pertaining to the new city which were calculated pursuant to this paragraph. Fees shall be payable at the time of the recording of the final map or parcel map, or at a later time as may be prescribed by local ordinance.

(3) (A) The land, fees, or combination thereof are to be used only for the purpose of developing new or rehabilitating existing neighborhood or community park or recreational facilities to serve the subdivision, except as provided in subparagraph (B).

(B) Notwithstanding subparagraph (A), fees may be used for the purpose of developing new or rehabilitating existing park or recreational facilities in a neighborhood other than the neighborhood in which the subdivision for which fees were paid as a condition to the approval of a tentative map or parcel map is located, if all of the following requirements are met:

(i) The neighborhood in which the fees are to be expended has fewer than three acres of park area per 1,000 members of the neighborhood population.

(ii) The neighborhood in which the subdivision for which the fees were paid has a park area per 1,000 members of the neighborhood population ratio that meets or exceeds the ratio calculated pursuant to subparagraph (A) of paragraph (2), but in no event is less than three acres per 1,000 persons.

(iii) The legislative body holds a public hearing before using the fees pursuant to this subparagraph.

(iv) The legislative body makes a finding supported by substantial evidence that it is reasonably foreseeable that future inhabitants of the subdivision for which the fee is imposed will use the proposed park and recreational facilities in the neighborhood where the fees are used.

(v) The fees are used within a specified radius that complies with the city's or county's ordinance adopted pursuant to subdivision (a), and are consistent with the adopted general plan or specific plan of the city or county. For purposes of this clause, "specified radius" includes a planning area, zone of influence, or other geographic region designated by the city or county, that otherwise meets the requirements of this section.

(4) The legislative body has adopted a general plan or specific plan containing policies and standards for parks and recreational facilities, and the park and recreational facilities are in accordance with definite principles and standards.

(5) The amount and location of land to be dedicated or the fees to be paid shall bear a reasonable relationship to the use of the park and recreational facilities by the future inhabitants of the subdivision.

(6) (A) The city, county, or other local public agency to which the land or fees are conveyed or paid shall develop a schedule specifying how, when, and where it will use the land or fees, or both, to develop park or recreational facilities to serve the residents of the subdivision. Any fees collected under the ordinance shall be committed within five years after the payment of the fees or the issuance of building permits on one-half of the lots created by the subdivision, whichever occurs later. If the fees are not committed, they, without any deductions, shall be distributed and paid to the then record owners of the subdivision in the same

proportion that the size of their lot bears to the total area of all lots within the subdivision.

(B) The city, county, or other local agency to which the land or fees are conveyed or paid may enter into a joint or shared use agreement with one or more other public districts in the jurisdiction, including, but not limited to, a school district or community college district, in order to provide access to park or recreational facilities to residents of subdivisions with fewer than three acres of park area per 1,000 members of the population.

(7) Only the payment of fees may be required in subdivisions containing 50 parcels or less, except that when a condominium project, stock cooperative, or community apartment project, as those terms are defined in Sections 4105, 4125, and 4190 of the Civil Code, exceeds 50 dwelling units, dedication of land may be required notwithstanding that the number of parcels may be less than 50.

(8) Subdivisions containing less than five parcels and not used for residential purposes shall be exempted from the requirements of this section. However, in that event, a condition may be placed on the approval of a parcel map that if a building permit is requested for construction of a residential structure or structures on one or more of the parcels within four years, the fee may be required to be paid by the owner of each parcel as a condition of the issuance of the permit.

(9) If the subdivider provides park and recreational improvements to the dedicated land, the value of the improvements together with any equipment located thereon shall be a credit against the payment of fees or dedication of land required by the ordinance.

(b) Land or fees required under this section shall be conveyed or paid directly to the local public agency which provides park and recreational services on a communitywide level and to the area within which the proposed development will be located, if that agency elects to accept the land or fee. The local agency accepting the land or funds shall develop the land or use the funds in the manner provided in this section.

(c) If park and recreational services and facilities are provided by a public agency other than a city or county, the amount and location of land to be dedicated or fees to be paid shall, subject to

paragraph (2) of subdivision (a), be jointly determined by the city or county having jurisdiction and that other public agency.

(d) This section does not apply to commercial or industrial subdivisions or to condominium projects or stock cooperatives that consist of the subdivision of airspace in an existing apartment building that is more than five years old when no new dwelling units are added.

(e) Common interest developments, as defined in Section 4100 of the Civil Code, shall be eligible to receive a credit, as determined by the legislative body, against the amount of land required to be dedicated, or the amount of the fee imposed, pursuant to this section, for the value of private open space within the development which is usable for active recreational uses.

(f) Park and recreation purposes shall include land and facilities for the activity of “recreational community gardening,” which activity consists of the cultivation by persons other than, or in addition to, the owner of the land, of plant material not for sale.

(g) As used in this section with regard to the expenditure of fees, the term “fee” includes any interest income generated from a fee charged and collected pursuant to this section.

(h) This section shall be known, and may be cited, as the Quimby Act.

(i) This section shall become operative on January 1, 2021.

SEC. 3. The amendment of Section 66477 of the Government Code made by this act does not constitute a change in, but is declaratory of, existing law. The Legislature further finds and declares that any locally adopted ordinance or regulation that is consistent with the amendment of Section 66477 of the Government Code made by this act is valid.

Approved _____, 2015

Governor